ALABAMA
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

April 8, 1996

Mr. Winston Smith, Director
Air Pesticides & Toxics
Management Division
EPA Region IV
345 Courtland Street, N.E.
Atlanta, GA 30365

Dear Mr. Smith:

Please find enclosed a signed copy of the Alabama/EPA Compliance Assurance Agreement. A copy with your signature was sent to us in a letter from you dated March 20, 1996.

I appreciate your staff's cooperation in making this agreement a workable document.

If you have any questions, please give me a call at (334) 271-7861.

Sincerely,

[/s/ Richard E. Grusnick]
Richard E. Grusnick, Chief
Air Division

REG:pkb

Enclosure

ALABAMA/EPA COMPLIANCE ASSURANCE AGREEMENT

I. INTRODUCTION

The purpose of this agreement is to enhance the effectiveness of the combined state and EPA Air Compliance and Enforcement Program. This agreement presents by reference and/or attachment hereto, the guidance which serves as the basis for implementation of the air enforcement/compliance program in Alabama. The state or local basis may vary for different state and local agencies (S/Ls); however, the EPA basis is consistent throughout the S/Ls. This agreement supports the enforcement efforts of the Alabama Department of Environmental Management (ADEM), while strengthening the enforcement partnership with EPA.

This Agreement will be reviewed annually and updated as necessary.

II. STATE/EPA COMMITMENTS

The state and EPA will implement the Clean Air Act (CAA), and related state or federal regulations in a consistent manner throughout the regulated community.

This agreement serves as the EPA and state guide to ensure that their collective enforcement efforts pursue similar goals and results. We will seek continuous environmental improvement and consistent compliance within the regulated community. To ensure our success, we will coordinate our effort as follows:

A. Share inspection plans and procedures for preparation of the plans; seek to resolve any conflicts prior to implementation of the plans; coordinate any changes to the plans.

B. Take joint state/EPA actions, particularly where a state is moving to correct a violation but does not have necessary authorities or resources.

C. EPA will discuss with the state and consider sharing credit in cases where national issues dictate EPA as

lead agency, or when the state and EPA jointly determine that for exceptional reasons EPA should be the lead agency. This sharing of credit may be accomplished by issuance of joint press releases.

D. The state and EPA will establish a process for resolving disputes, especially differences in interpretation of regulations or program goals as they may affect resolution of individual instance of non-compliance.

E. ADEM and EPA will begin again to conduct monthly conference calls as means of ensuring that we maximize effectiveness by sharing information regarding ongoing and planned enforcement activities. The calls shall focus on priority cases. The first call will occur in late February 1996 and will focus on the status of priority cases as of January 31, 1996. EPA will insure that the appropriate level of personnel will participate in the calls, that the information ADEM sent in the monthly package has been reviewed, and that information on the status of cases EPA is involved in or is considering being involved in is up-to-date. By the last day of each month, EPA will mail to ADEM a copy of its case-tracking printout, updated to the end of the previous month.

F. The state and EPA will rely on existing guidance and practices for establishing time frames to ensure that there is timely and appropriate enforcement response to violations. Time frames established by existing guidance will be considered as trigger points and not as absolute deadlines. The time frames will be viewed as key milestones to be used to manage the program by providing general targets to strive for in good program performance; trigger review of progress in enforcement cases; and a presumption of where EPA may take direct enforcement action after consultation with the state.

G. The state will inform EPA of proposed penalty levels though the monthly submittal and the conference call

as soon as a proposed amount has been arrived at within ADEM. Any input into ADEM's planned response to a violation should be provided as soon as possible after EPA becomes aware of the circumstances. EPA will use EPA's BEN model to determine reasonableness of penalties sought through EPA, state or joint EPA/state enforcement actions. When the state and EPA cannot arrive at a mutual penalty, the disputes resolution process established in E., above will be adhered to. If resolution of the penalty amount cannot be reached, EPA retains the right and responsibility to overfile.

H. EPA will continue to perform inspections in the state, averaging between one to three percent of the major sources in the state on an annual basis. The frequency and number of inspections may be reduced or increased pending the development of criteria and measures for defining good program performance or success. EPA will also continue to perform multimedia inspections. The frequency and number of these inspections will be predicted on an annual basis. The "lead" agency in resolving federally-enforceable violations discovered during these inspections will be discussed with the state, and a determination made as to which agency is better suited to resolve said violations. If a determination cannot be made, EPA and the state mutually agree to apply the dispute resolution process as identified in E., above.

COMPLIANCE ASSURANCE AGREEMENT

Region 4, U.S. Environmental Protection Agency, Air, Pesticides and Toxics Management Division and the Alabama Department of Environmental Management, agree to the following operating criteria for enforcement of federally-delegated air regulations. This agreement applies beginning with the latest signature date below, until October 1, 1996, or until such time as the parties agree to revisions of this agreement. By agreeing to the criteria set forth in this agreement, the signatory parties confirm the significance of enforcement of environmental laws and regulations and the need to cooperate effectively and efficiently in their implementation.

[/s/ Richard E. Grusnick] — [4/8/96]
Richard E. Grusnick, Chief — Date
Air Quality Division
Alabama Department of Environmental Management

[/s/ for] — [March 20, 1996]
Winston A. Smith, Director — Date
Air, Pesticides and Toxics Management Division
U.S. Environmental Protection Agency - Region 4

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

ENVIRONMENTAL DEFENSE, et al.,

Petitioners,

v.

DUKE ENERGY CORPORATION,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF FOR AMICI CURIAE AMERICAN LUNG ASSOCIATION, AMERICAN THORACIC SOCIETY, AMERICAN ASSOCIATION FOR CARDIOVASCULAR AND PULMONARY REHABILITATION, NATIONAL ASSOCIATION FOR THE MEDICAL DIRECTION OF RESPIRATORY CARE, AND AMERICAN COLLEGE OF CHEST PHYSICIANS IN SUPPORT OF PETITIONERS

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